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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,218	09/28/2001	John David Tucker	KCC-15,529	7138

7590 09/20/2002

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EXAMINER

TRAN, THAO T

ART UNIT	PAPER NUMBER
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1711

7

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,218

Applicant(s)

TUCKER ET AL.

Examiner

. Thao T. Tran

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

A/ It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.

B/ It was not executed in accordance with either 37 CFR 1.66 or 1.68.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4,⁷ 12,¹⁵ 20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Chisholm et al. (US Pat. 6,300,405).

In regards to claims 1-4, 12, and 20, Chisholm teaches a molding composition, comprising polypropylene ionomer blended with impact modifier of about 1-25%, or less than about 15% by weight (see abstract; col. 4, ln. 66 to col. 5, ln. 2; col. 6, ln. 16; col. 7, ln. 13-19). The reference further teaches the impact modifier being a copolymer comprising ethylene propylene diene or styrene-containing polymer (see col. 7, ln. 24, ln. 36-44; col. 8, ln. 1-7).

In regards to claims 7 and 15, Chisholm teaches a multi-fiber yarn comprising the molding composition (see col. 6, ln. 6-9).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-6, 8-11, 13-14, 16-19, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chisholm as applied to claims 1, 12, and 20 above.

Chisholm is as set forth in claims 1, 12, and 20 above and incorporated herein.

Chisholm further teaches that in articles molded from the compositions, chopped strands or even shorter lengths of the fibers would be used (see col. 6, ln. 9-14).

Although the reference does not specifically teach the fibers being used to form a spunbond fiber, a staple fiber, a knit fabric, a woven fabric, a nonwoven fabric, or an absorbent article; it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that Chisholm's fibers would be used to make these articles, because Chisholm teaches that the fibers would be bundled into yarns, ropes or rovings, or woven into mats and the like, and the products formed from the fibers are not critical in the invention (see col. 6, ln. 6-9).

6. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tung et al. (US Pat. 6,100,307).

In regards to claims 1-4, 12, and 20-22, Tung teaches a polyester composition, comprising polypropylene blended with impact modifiers which comprise ethylene propylene diene (see abstract; col. 11, ln. 48-60). The reference, however, does not specify the weight percent of the impact modifiers.

Nevertheless, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that the weight percent of the impact modifiers would have been routinely optimized in order to obtain the maximal benefits attendant therewith. See *In re Aller*, 105 USPQ 233 (CCPA 1955).

In regards to claims 7 and 15, Tung teaches that the mixed polymer composition is used to make yarns and fibers (see col. 14, ln. 36-50).

In regards to claims 5-6, 8-11, 13-14, 16-19, and 23, although the reference does not specifically teach the fibers being used to form a spunbond fiber, a staple fiber, a knit fabric, a woven fabric, a nonwoven fabric, or an absorbent article; it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that Tung's composition would be used to make these articles, because Tung teaches that the articles made using the composition would be unlimited (see col. 14, ln. 36-37).

Contact Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 703-306-5698. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

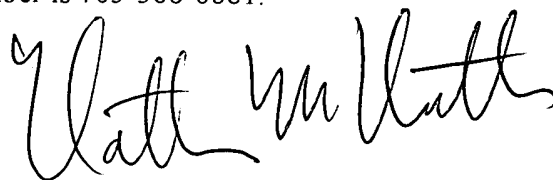
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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September 19, 2002



NATHAN M. NUTTER
PRIMARY EXAMINER
GROUP 1711